



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 25, 1994

Mr. Ramon Dasch  
Texas Natural Resource Conservation  
Commission  
P.O. Box 13087  
Austin, Texas 78711-3087

OR94-688

Dear Mr. Dasch:

The Texas Natural Resource Conservation Commission ("TNRCC") has asked if certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. The request was assigned ID# 28553.

TNRCC received a request for information concerning the Col-Tex Refinery Superfund Site (the "site"). The request was for (1) a copy of a report by Cura, Inc. and (2) the "analytical data" collected by TNRCC and Intera, Inc. during tank removal and the subsurface activities. You indicate that TNRCC has already released the report to the requestor. However, TNRCC contends that the analytical data is excepted from disclosure under section 552.103(a). To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

You have provided information that shows TNRCC is being sued over an order it issued relating to contamination involving the site. The plaintiff has filed suit against TNRCC to have this order overturned. You also submitted the records responsive to this request to this office. A review of the analytical data submitted to this office shows that it is related to the litigation. Because TNRCC has demonstrated the applicability of section 552.103(a), these records may be withheld from disclosure.<sup>1</sup>

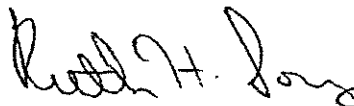
---

<sup>1</sup>Because we have determined that this information may be withheld from disclosure under section 552.103(a), we do not need to consider your arguments that this information is excepted from disclosure under sections 552.107 and 552.111.

In reaching this conclusion, we assume that the opposing parties to the litigation have not previously had access to the records at issue. Absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2. If the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). The applicability of section 552.103(a) also ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3. We note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, it is within TNRCC's discretion to release the analytical data to the requestor. Gov't Code § 552.007; Open Records Decision No. 542 (1990) at 4.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Government Section

RHS/rho

Ref.: ID# 28553

Enclosures: Submitted documents

cc: Mr. Phil Bullock, P.G.  
Operations Manager  
Huntingdon Engineering & Environmental  
P.O. Box 17366  
Austin, Texas 78760  
(w/o enclosures)

Mehron Azarmehr  
Assistant Attorney General  
Environmental Protection Division  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548  
(w/o enclosures)